

Open Society Georgia Foundation

Tbilisi, June 2018



This policy brief covers period of
December 2017 till June 2018

AUTHOR:

Erekle Urushadze *

On behalf of Transparency
International Georgia

Peer review by:

Dr. Tobias Schumacher

This policy brief is prepared within the framework of the Open Society Georgia Foundation's in-house project "monitoring implementation of the EU-Georgia Association Agreement by coalition of civil society organizations". The views, opinions and statements expressed by the author and those providing comments are theirs only and do not necessarily reflect the position of the Foundation. Therefore, the Open Society Georgia Foundation is not responsible for the content of the material

Reforming Georgia's Civil Service: Progress Towards Meeting Association Agenda Commitments

Introduction

The EU-Georgia Association Agenda for 2017-2020 requires Georgia to:

*"Pursue public administration reform in line with the Principles of Public Administration and the newly adopted Law on Civil Service with emphasis on implementation monitoring and fostering an accountable, efficient, effective, transparent public administration system of selection, promotion and dismissal and on building a merit-based and professional civil service, specialised needs-based training for civil servants working in all public administration sectors, agencies as well as in state owned enterprises, on delivering quality public services and on improving management of public finances."*¹

According to the Agenda, Georgia's short term priority is to "implement the new civil service legal framework to ensure a more professional and merit-based civil service," while the medium-term priority is to "foster an accountable, efficient, effective, transparent public administration and build merit-based and professional civil service."²

The inclusion of these objectives in the Association Agenda is a recognition of the fact that, despite Georgia's progress in terms of improving the overall quality of public administration over the last decade and a half (which resulted, among other things, in almost complete elimination of bribery in public services), the country has so far failed to establish an autonomous and professional civil service.

The main challenges, which Georgia's efforts to reform its public administration have so far failed to address, include (1) the civil service's insufficient autonomy

* Erekle Urushadze is a programme manager at Transparency International Georgia and oversees the organization's research and advocacy work in the area of anti-corruption policy and reforms. Since joining TI Georgia in 2009, he has played the lead role in producing the organisation's National Integrity System assessments, which review the performance of Georgia's key institutions. Mr. Urushadze worked for the US National Democratic Institute, the BBC Monitoring Service and the Caucasus Institute for Peace, Democracy and Development before joining TI Georgia. He holds a MA in International Relations

and protection from undue external influence, (2) significant opportunities for favouritism in recruitment, and (3) lack of transparency and uniformity in the remuneration of civil servants. These three key challenges are discussed in the relevant sections below, while the final section summarizes the main findings and offers recommendations for future reform.

Independence of Civil Servants

The lack of an independent civil service has had a negative impact on the wider political system, making it possible for successive ruling parties to use the public administration's resources for their electoral campaigns and thus undermining fair political competition.

Georgia's ruling parties have traditionally benefited from their control over the civil service in at least two ways: By using civil service jobs to reward their activists and by utilizing the public administration's resources during their electoral campaigns. When the current ruling party, Georgian Dream, came to power in the autumn of 2012, more than 5,000 civil servants were dismissed from various government institutions in the following months. A similar process took place when Georgian Dream assumed control over the Tbilisi City Hall in 2014.³ In 2013, the parliament amended the Criminal Code and made it a criminal offence to force a civil servant to submit his or her resignation.⁴ The move was a response to allegations that the procedure had been abused in order to make mass personnel changes in civil service appear voluntary. However, a study by the Georgian Young Lawyers Association found that 128 civil servants filed for resignation in the Tbilisi City Hall in 2016 alone, which suggests that the problem may not have been solved by the change in the law.⁵

During the 2016 parliamentary elections, the OSCE/ODIHR Election Observation Mission received "numerous allegations regarding pressure on public employees, including requirements to attend campaign events."⁶ The local watchdog ISFED reported similar cases during the local elections a year later.⁷

The commitment of the ruling party's senior political leadership to the establishment of a genuinely independent civil service remains doubtful. In July 2017, Parliament Chairman Irakli Kobakhidze was criticized by civil society organizations for publicly suggesting that civil servants must refrain from criticizing political officials.⁸ In March 2018, Tamar Bagratia, head of the Environmental Protection Agency, resigned and publicly accused Deputy Minister of Agriculture Tamar Tandilashvili of exerting pressure on her and unduly interfering in the appointment of the agency's deputy chief. The Georgian Young Lawyers Association suggested that Tandilashvili's actions constituted a violation of the law but no investigation has been launched so far.⁹

A 2016 monitoring report by the OECD Anti-Corruption Network concluded that, while the current Civil Service Law "provides for some mechanisms that could reduce political influence on the civil service...these mechanisms are not sufficient to protect professional civil servants from undue political influence by political appointees in practice." The OECD ACN also noted that "ministers and heads of agencies are direct supervisors of civil servants in Georgia as there is no position of a senior civil servant, such as a state secretary."¹⁰

¹ Association Agenda, p 10

² Association Agenda, p 17

³ Georgia NIS 2015, p 55

⁴ <http://netgazeti.ge/news/18827/> (in Georgian)

⁵ <https://gyla.ge/ge/post/tbilisis-meridan-piradi-ganckhadebis-safudzvelze-samsakhuridan-gatavisuflebis-tendencia-grdzeldeba#sthash.rFoQEui5.dpbs> (in Georgian)

⁶ OSCE/ODIHR report on 2016 parliamentary elections, p12

⁷ ISFED report on 2017 local elections, p 17

⁸ http://www.osgf.ge/index.php?lang_id=ENG&sec_id=23&info_id=5005

⁹ <https://gyla.ge/en/post/soflis-meurne-obis-ministris-moadgilis-mier-dairghva-sajaro-samsakhuris-shesakheb-saqartvelos-kanonis-motkhovnebi#sthash.XVuC7Ibj.dpbs>

¹⁰ OECD ACN 2016, pp 30-31

Recruitment

Ensuring merit-based recruitment in the civil service is a longstanding challenge in Georgia. Following the post-2012 mass dismissals discussed in the previous section, only 4% of more than 6,5000 newly appointed civil servants were selected through competitive recruitment.¹¹ The Georgian Supreme Court reviewed the practice of dismissals in civil service in 2014 and concluded that the problem of “nepotism and of using positions for narrow partisan and corrupt goals” had not been solved in Georgia.

Until 2014 (when amendments to the Civil Service Law came into force), competitive recruitment was optional for Georgia's public institutions. Competitions held in local government bodies in 2014 raised questions, as Civil Society Organizations (CSOs) noted the lack of transparency (restriction of the right of CSO representatives to monitor the process) and possible undue involvement of representatives of higher-level government bodies in the selection process at the local level.¹²

The new Civil Service Law (which was adopted in 2015 but only came into force in 2017) introduced further improvements in terms of competitive selection (including requirement of competitive selection for all positions and mandatory certification of candidates) and, according to the OECD ACN, “provides for sufficient conditions to ensure a merit-based approach to employment and promotion of civil servants.”¹³ Yet, too little time has passed since the law's entry into force to determine whether it is applied effectively in practice. The OECD ACN concluded in a monitoring report adopted in the autumn of 2017 that Georgia had, at the time, failed to make progress in terms of improving the capacity of the Civil Service Bureau as well as the human rights management units within individual institutions for the application of merit-based recruitment rules.¹⁴

In late December 2017, Parliament adopted an amendment to the new Civil Service Law, allowing public bodies to recruit employees based on labour contracts (a category of civil service employees who are not professional civil servants and hired for supporting or temporary tasks) without competitive selection (the original version of the law provided for mandatory simplified competition for such positions). CSOs criticized the decision, emphasizing that the tasks performed by such employees were essentially part of the civil service and that the change increased the risk of nepotism in recruitment.¹⁵

Remuneration

Ensuring transparent, predictable, and merit-based remuneration of civil servants is another important goal which Georgia's civil service reform has yet to achieve. A 2017 report by leading Georgian CSO IDFI described the remuneration system in the country's civil service as “unbalanced and opaque,” identifying the “practice of unjustified bonuses and salary supplements” as a key source of the problem.¹⁶

The new Law on Labour Remuneration in Public Institutions (adopted in 2017) introduced a number of positive changes in the system, including the establish-

¹¹ <http://www.transparency.ge/en/post/press-release/ti-georgia-releases-new-report-changes-civil-service-after-2012-parliamentary-elections>

¹² <https://issuu.com/gylasaia/27b-15c2a2d7251>
<http://www.isfed.ge/main/921/eng/>

¹³ OECD ACN 2016, p 32

¹⁴ OECD ACN 2017, p 19

¹⁵ <https://idfi.ge/ge/joint-statement-of-idfi-and-gyla-on-the-abolition-of-simplified-recruitment-procedure-for-contracted-employees> (in Georgian)

¹⁶ https://idfi.ge/en/challenges_of_the_georgian_bureaucratic_system_2011_2016

ment of ranks and classes as well as coefficients for calculating the salaries of different categories of civil servants, which should, at least in theory, render the system more transparent and predictable. At the same time, CSOs have highlighted important shortcomings in the law which could limit its positive impact. Most notable among these are (a) the law does not apply to a significant number of individuals who are effectively members of the civil service (including prosecutors, employees of regulatory bodies, heads of state-owned enterprises), (b) the system of coefficients is arranged in a way that leaves too much discretion to the heads of institutions in determining the pay rates and could result in significant differences between the salaries of civil servants holding similar positions within the same institution, (c) there is a considerable gap between the remuneration of civil servants from the central government and those from the governments of autonomous republics, as well as between the employees of central and local government bodies, (d) while there is a limit on the size of bonuses, the law allows for exceptions in "special cases" without providing a definition of what that term means, and (e) the law allows bonuses for temporary employees and for political officials, the latter being particularly problematic since, in many cases, they can essentially determine the size of their own bonuses.¹⁷

Conclusions and Recommendations

Georgia has not yet achieved the goal of establishing a truly independent and merit-based civil service. The inclusion of this goal in the new Association Agenda is important insofar as it represents recognition of this problem and could facilitate progress in the coming years.

The adoption of the new Civil Service Law, which came into force in 2017, was a step in the right direction and introduced a number of important improvements. Yet, as studies and assessments by local and international organizations have demonstrated, it is not enough and a number of further changes are required in order to effectively address the remaining significant problems. Specifically, the Georgian Government and Parliament need to:

- Demonstrate political will to promote the establishment of a genuinely autonomous and professional civil service. The possibility of introducing the position of senior civil servant is worth serious consideration, while political officials need to refrain from statements that encroach upon the independence of civil servants;
- The Georgian Government must ensure the effective application of the new recruitment procedures in practice, inter alia by undertaking to strengthen the capacity of the Civil Service Bureau and the human resources management units within public institutions. In this context, Parliament must consider abolishing exceptions to competitive recruitment;
- The Government and Parliament must revise the newly adopted law on remuneration to address the gaps which have been identified by CSOs and could undermine uniformity, fairness and transparency of remuneration in civil service.

¹⁷ https://idfi.ge/ge/ammendments_into_the_law_on_public_officials_salaries (in Georgian)

<https://gyla.ge/ge/post/sajaro-datsese-bulebashi-shromis-anazghaurebis-she-sakheb-kanonproeqtis-problemuri-sakit-khebi#sthash.fcg1rEKi.dpbs> (in Georgian)